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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/025,896
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	First Named Inventor	Billie Longstreth
	Group Art Unit	3724
	Examiner Name	Charles Goodman
Total Number of Pages in This Submission	24	Express Mail Attorney Docket Number EU418293583US

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Firm or Individual name	BILLIE JEAN LONGSTRETH
Signature	<i>Billie Jean Longstreth</i>
Date	September 16, 2004

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September 16, 2004

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Subject: Appeal Brief for Patent Application
No. 09/025,896

I received an office communication dated August 25, 2004 from the patent examiner, Mr. Goodman, notifying me that the Appeal Brief I filed on May 7, 2004 did not comply with all the requirements of 37 CFR 1.192© and that I should file a complete new brief in compliance with 37 CFR 1.192© to avoid dismissal of the appeal.

Attached herewith is a complete new appeal brief that includes all the required information.


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- 2 Incls
1. Appeal Brief (3 copies)
 2. Drawing of claimed invention



September 16, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BILLIE J. LONGSTRETH	:	BEFORE THE
Appellant pro se	:	BOARD OF PATENT
CABBAGE CUTTER	:	APPEALS AND
Application No.: 09/025,896	:	INTERFERENCES
Filing Date: Feb.18, 1998	:	
2204 Roseanne Court	:	
Fairborn, Ohio 45324	:	

APPELLANT'S APPEAL BRIEF

The applicant, Billie J. Longstreth, Appellant pro se, has appealed the patent examiner's rejection of claim for Patent Application No. 09/025,896, a cabbage cutter.

REAL PARTY OF INTEREST

Billie J. Longstreth, appellant pro se, 2204 Roseanne Court, Fairborn, Ohio 45324.

RELATED APPEALS AND INTERFERENCES

The appellant has no related appeals or interferences that must be considered under current appeal.

STATUS OF CLAIMS

Previous Claims 1-6 has been cancelled. Claim 7 has been presented for examination and has been rejected by the examiner. The rejection of Claim 7 by the Examiner is being appealed.

STATUS OF AMENDMENTS

No amendments have been filed since the current final rejection.

SUMMARY OF INVENTION

(See corresponding reference numerals on the attached drawing)

The claimed invention is a non-powered, hand-operated device that has been designed specifically to cut and chop cabbage comprising a hollow, metal, cylindrical body **1** having two ends, that when placed in a perpendicular position, has a circular top **2** and a circular bottom **3** connected by the cylindrical body wall **1**. The circular top **2** is closed and covered with a permanently affixed cap **4** that extends slightly over onto the exterior wall of the cylindrical body **1** to serve as a handgrip and provide additional strength and durability to the cabbage cutter. The circular bottom rim **3** is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping means **3** that can be sharpened should it become dulled with use. The cabbage cutter has a removable protective cover **5**, contiguous with the cutting and chopping means **3**, that when placed over the cutting and chopping means **3** serves as a protective shield from injury, and protects the cutting and chopping means **3** from becoming damaged when the device is not in use or stored.

The placement of the permanently affixed cap (handgrip) **4** over the closed, metal, circular top **2** adds substantial strength and durability and distinguishes this cabbage cutter from all other non-powered, hand-operated devices in the art that are designed with open top rims, removable tops, and/or removable handgrips.

This cabbage cutter works best when the cabbage head is cut into chunks, and placed in a large container, and the person

using the device grasps the cap (handgrip) **4** and brings the circular cutting and chopping means **3** down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size. This cabbage cutter was designed and constructed for strength and durability and can easily, efficiently, and effectively cut through the thick stalks and tightly overlapping leaves.

This cabbage cutter is simply designed, is easy to use, requires no assembly, and has no parts to malfunction during use. Removing the protective cover **5** from the cutting and chopping means **3** readies the device for use. The cabbage cutter is inexpensive to manufacture and, therefore, inexpensive to purchase. The cabbage cutter is easy to clean, dishwasher safe, and takes only a small space to store when not in use.

ISSUES

1. Whether Claim 7 is unpatentable under 35 U.S.C. 102(b) over Seib et al because a device anticipated by Seib et al comprises all the elements claimed in the claimed invention.

2. Whether Claim 7 is unpatentable under 35 U.S.C. 103(a) over Seib et al because of the obviousness of the claimed invention to a device anticipated by Seib et al.

3. Whether Claim 7 is unpatentable under 35 U.S.C 102 over Seib et al based on the physical structure of the two devices, and if the manner in which the claimed invention is to be used differentiates the claimed invention from the device anticipated by Seib et al.

GROUPING OF CLAIMS

One independent claim, Claim 7, has been presented for examination. Claim 7 stands and falls alone.

ARGUMENTS

1. Claim Rejection under 35 U.S.C. 102:

a. The Examiner, Charles Goodman, rejected the appellant's claim under 35 U.S.C. 102(b) as being anticipated by Seib et al because Seib discloses a stoma flange cutter

comprising all the elements claimed in the appellant's claimed invention, the cabbage cutter, including a circular top, a circular bottom, a cylindrical body wall, a permanently affixed cap, cutting edge, and a removable protective cover. The appellant argues that two devices can comprise the same elements and still be physically and mechanically different. It is the result of the interrelation or arrangement of these elements in their entity that create the whole device to make each device different from the other. This is the case with the stoma flange cutter anticipated by Seib et al and the claimed invention, the cabbage cutter. Seib's stoma flange cutter differs from the appellant's claimed invention, the cabbage cutter, in that the stoma flange cutter comprises two sections, a top section and a bottom section that are separable and movable. The circular cutter that has all the same elements as the claimed invention that has been compared to the claimed invention, is press fitted into a suitable groove, with support, on the first surface of the top section of the stoma flange cutter with the sharpened edge extending away from surface. The second section (bottom section) of the stoma flange cutter has first and second spaced surface portions. The cutting element is adapted to cut in cooperation with the second section, and the cutting element can be adapted to flip end-to-end when one end becomes dull, whereas, the claimed invention, the cabbage cutter, comprises only one section, a hollow, metal, cylindrical body having two ends and when placed in a perpendicular position has a top and a bottom that are connected by a cylindrical wall; the top is closed and has a permanently affixed handgrip that covers the closed top and extends slightly over onto the wall of the cabbage cutter, and provides additional strength to the device. The bottom of the cabbage cutter is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping edge. The cabbage cutter has a single cutting edge that cannot be adapted to flip end-to-end as the stoma flange cutter due to the closed top and permanently affixed handgrip on the opposite end, but the single cutting edge of the cabbage cutter can be sharpened if the cutting and chopping edge should become dulled from extensive use. When the stoma flange cutter is not in use, the device is inserted into an open ended envelope (package cover) means that is square in configuration with the lateral dimensions similar to the diametric extent of the device where sections are effectively held together for protection, storage, and transportation, whereas, the cabbage cutter has a removable protective cover, contiguous with the cutting and chopping edge, that is placed over the cutting and chopping edge to serve as a shield from injury and to protect the cutting and chopping edge from becoming damaged when the device is not in use or stored.

Material is inserted between the two sections of the stoma flange cutter for cutting and then the sections are pushed together (one section in each hand) and rotated (if necessary) relative to each other. More particular, between pressure applied to and slight rotation of cutter relative to surface, the flange material is cut so that a flange having an appropriately sized hole is provided for its intended use, whereas, the cutting and chopping edge of the cabbage cutter is located on the open bottom rim of the cabbage cutter and the device works best when cabbage head is cut in chunks, placed in a large container, and an operator grasps the handgrip and brings the cutting and chopping edge down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size. Although the two devices do comprise the same parts per se, the claimed invention, the cabbage cutter, is physically and operationally different from Seib's stoma flange cutter to be patentable.

b. The fact that the claimed invention, the cabbage cutter, cuts cabbage was not given significant patentable weight by the Examiner because the manner in which the claimed invention is intended to be used does not differentiate the claimed invention from a device anticipated by Seib et al satisfying the claimed structural limitations. The appellant respectfully disagrees with the Examiner's decision and argues that the two devices are significantly different, physically and operationally, and also, the appellant would like to point out the fact that the device anticipated by Seib et al lacks the capability to cut cabbage and the claimed invention, the cabbage cutter, lacks the capability to cut a stoma flange.

2. Claim Rejection under 35 U.S.C. 103:

The Examiner rejected the claimed invention under 35 U.S.C. 103(a) which forms the basis for all obviousness rejections as being unpatentable over Seib et al because Seib et al discloses a stoma flange cutter comprising all the elements claimed including a circular top, a circular bottom, a cylindrical body wall, a permanently affixed cap, cutting edge, and a removable protective cover. However, the circular cutting apparatus anticipated by Seib et al which has been compared to the claimed invention as having all the elements as the claimed invention is press fitted into a suitable groove on the first surface of the top section of the device with the sharpened edge extending away from the surface. The appellant argues that the physical appearance of the stoma flange cutter and the way the device operates is significantly different from the cabbage

cutter. The stoma flange cutter as a whole is squarish in configuration with two sections that are attached to each other, whereas, the cabbage cutter as a whole is a single round cylinder with the open bottom rim filed or rubbed down to a smooth, thin, sharp cutting and chopping means. The physical, mechanical and operational differences between the stoma flange cutter and the claimed invention, the cabbage cutter, are such that they would not be obvious to a person with ordinary skills in the field. The appellant argues that the differences in the two devices indicate unobviousness, thus, rendering the claimed invention unobvious over the stoma flange cutter anticipated by Seib et al. The two devices utilize a different principle of operation for a different use. The appellant argues that the stoma flange cutter would not be easily recognized as a cutter because of the physical shape of the device and because the cutting element, that has been compared to the claimed invention, the cabbage cutter, is imbedded within the top section of the device and not easily visible.

The appellant believes that the examiner has not presented a convincing line of reasoning as to why he believes the two devices are structurally similar and why the similarities would have been obvious to the ordinary artisan in the field. The appellant argues that the claimed invention is patentable over Seib et al for all the aforementioned reasons.

Respectfully
Submitted,



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Appellant pro se

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APPENDIX

CLAIMS

I claim a cabbage cutter that is non-powered and hand-operated for cutting and chopping cabbage comprising a hollow, metal, cylindrical body having two ends and when placed in a perpendicular position has a top and a bottom that are connected by a cylindrical wall; the top is closed and has a permanently affixed handgrip that covers the closed top and extends slightly over onto the wall of the cabbage cutter, and provides additional strength to the device; the bottom is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping edge that can be sharpened if the cutting and chopping edge should become dulled from extensive use; the device has a removable protective cover, contiguous with the cutting and chopping edge, that when placed over the cutting and chopping edge serves as a shield from injury, and protects the cutting and chopping edge from becoming damaged when the device is not in use or stored; the device works best when cabbage head is cut in chunks, placed in a large container, and an operator grasps the handgrip and brings the cutting and chopping edge down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size.



CABBAGE CUTTER
BILLIE JEAN LONGSTRETH
09/025,896

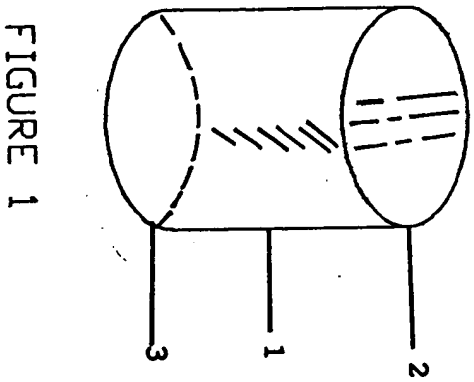


FIGURE 1

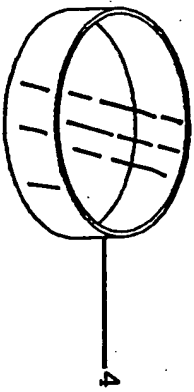


FIGURE 2

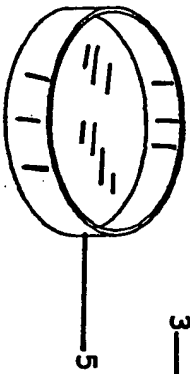


FIGURE 3

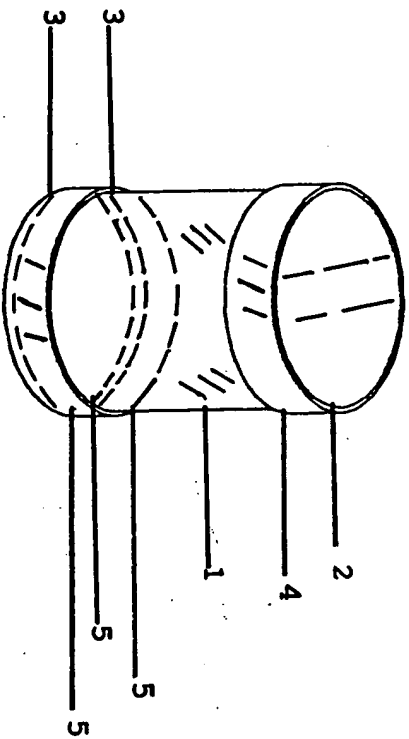


FIGURE 4